IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN
&
THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

FRIDAY, THE 13TH APRIL 2007 / 23RD CHAITHRA 1929

WP(C).No. 1419 of 2004(R)

PETITIONER:

K.P.SOOPI HAJI, S/O. MOIDEEN,
HANEEF MANZIL, P.O.VARAM, KANNUR.

BY ADV. SRI.A.MOHAMED MUSTAQUE

RESPONDENTS:
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1. RAHEENA (MINOR), REPRESENTED BY MOTHER
V.N.ASMA D/O MOOSA, ASMA MANZIL, MATTANNUR P.O.

2. RAHEEZA (MINOR) REPRESENTED BY MOTHER
V.N.ASMA, D/O. MOOSA, P.O.MATTANNUR.

3. THAHIRA (MINOR) REPRESENTED BY FATHER
AND NEXT FRIEND KHADER, KARANGADU HOUSE P.O.,
MATTANNUR

4. P.P.VIJAYAN, S/O. CHATHU,
SOMA PADMA PETROL BUNK, VEERAJPETTA P.O.

5. THE NATIONAL INSURANCE CO. LTD.,
P.B.NO.40, BANK ROAD, KANNUR.

BY ADV. SRI.LAL GEORGE

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 3/04/2007, THE COURT ON 13/4/2007 DELIVERED THE FOLLOWING:

Orders on IA Nos.13688/05 & 15120/06 in WP(C)No.1419/04

Dismissed.

Sd/- P.R.Raman,Judge.
Sd/- Antony Dominic, Judge.

13/4/2007.

APPENDIX

PETITIONER'S EXTS:

Ext.P1 true copy of the award in OP(MV) 1856,1859 & 1981/95 dated 17.12.2001.

Ext.P2 true copy of the common order in I.A.Nos.6734/02 & 6735/02 on the file of the MACT, Thalassery dated 6.9.2003.

Ext.P3 true copy of the driving license.

P.R.Raman & Antony Dominic, JJ.
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W.P.C.No.1419 of 2004
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Dated this the 13th day of April, 2007.

JUDGMENT

Antony Dominic,J.

O.P.(MV) No.1856 of 1995, 1859 of 1995 and 1981 of 1995 on the file of the Additional Motor Accidents Claims Tribunal, Thalassery are the claim petitions filed by the injured, in an accident that occurred on 03.03.1995 at Kaload. On that fateful day, Autorikshaw bearing Regn. No.KL 13/6295, in which the injured were traveling had reached Kaload when Lorry bearing Regn. No.KCE 4719 driven by the 1st respondent before the Tribunal, hit the Autorikshaw resulting in three passengers sustaining serious injuries. In the proceedings before the Tribunal the 1st and 2nd respondents, the driver and the registered owner of the lorry, remained exparte.

2. The Tribunal by its common award dated 17th December 2001, disposed of the case awarding compensation. However, on the basis of Ext.B3 produced by the Insurance Company, the Tribunal found that the licence obtained by the 1st respondent had expired as on the date of the accident and by allowing an unlicensed person or a person not having an effective driving licence to drive the vehicle in question there was violation of the condition of the policy. On this basis the Tribunal held that in all the three cases, respondents 1 to 3 are jointly and severally liable to pay compensation, but the amount can later be realized from the 2nd respondent, the owner, who has been held to be vicariously liable for the tortious acts of the

1st respondent, the driver.

3. W.P.(C)No. 1419 of 2004 is filed by the 2nd respondent in the OP(MV), the registered owner of the offending lorry, seeking to quash Ext.P2 common order dismissing his application to condone delay in filing the application to set aside the exparte award against him.

4. We heard counsel for the writ petitioner and the respondents. The only issue that arises for our consideration in this Writ Petition is the correctness or otherwise of Ext.P2, the common order passed by the Tribunal rejecting the application to condone the delay in filing the petition for setting aside the ex parte award. It is not the case of the writ petitioner that he did not have the notice in the O.P.(M.V.) filed by the parties before the Tribunal. On receipt of notice, according to him, he had entrusted the matter with Shri.K.A.Philip, Advocate and it is stated that Shri.Philip had undertaken to do whatever is necessary and that believing the assurance of the counsel, he waited for being informed of further developments in the case. On examining this issue, the Tribunal found that there was no evidence to substantiate his reason for failure to appear in court or to satisfactorily explain the delay that was caused in filing the application to set aside the ex parte award.

5. The court also examined the plea that the petitioner had entrusted the matter with Advocate Shri.K.A.Philip. The court has noted that Advocate Shri.Philip was the counsel for the claimants before the Tribunal. Therefore, the plea put forward by the petitioner was found to be unbelievable. In any case, the court found on evidence that, even according to the petitioner, he had not entrusted the vakalath to Advocate Shri.Philip nor was he instructed to file written statement before the Tribunal. In such circumstances,

the Motor Accidents Claims Tribunal has rightly come to the conclusion that the story canvassed by the petitioner was unbelievable.

6. The Tribunal found that the petitioner could not convince it that he was prevented by sufficient cause from appearing in the proceedings or to explain the delay in filing the application to set aside the exparte award. We see no reason to differ from the finding of the Tribunal. We also agree with the conclusion of the Tribunal that it is too much to believe that the petitioner had entrusted the case with the Advocate, who was appearing for the claimants. In any case, the petitioner, having not produced any evidence in support of his contentions, was not entitled to succeed before the Motor Accidents Claims Tribunal.

In the result, we find no merit in the Writ Petition and the same will stand dismissed.

P.R. RAMAN
JUDGE

ANTONY DOMINIC
JUDGE

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